

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Asmblly Judiciary Cmtte Analyst: Gloria McConnell Bill Number: AB 1671

Related Bills: _____ Telephone: 845-4336 Amended Date: 04-27-99

Attorney: Janet Ballou Sponsor: _____

SUBJECT: Child Support Enforcement Technical Changes/Personal Property Liens

SUMMARY

As this bill directly affects the Franchise Tax Board (FTB), it would make the following **technical corrections** to child support collection laws administered by Franchise Tax Board (FTB) under the Revenue and Taxation Code. It would replace:

- a repealed section number with the new section number of law under which counties receive incentive payments for child support collections; and
- the formal name of Statewide Automated Child Support System (SACSS) with a generic reference to California's automated child support system.

Of potential impact to the FTB is the provision of the bill that would create a **lien** by operation of law (statutory lien) on personal property of an obligor for all amounts of overdue support regardless of whether the amounts have been adjudicated or otherwise determined.

SUMMARY OF AMENDMENT

The April 27, 1999, amendments do not affect the FTB. The April 15, 1999, amendment would create a lien on personal property of an obligor for all amounts of overdue support regardless of whether the amounts have been adjudicated or otherwise determined.

EFFECTIVE DATE

This bill would be operative and effective January 1, 2000.

LEGISLATIVE HISTORY

AB 3589 (Stats. 92, Ch. 1223) created a pilot program for FTB to collect delinquent child support.

AB 923 (Stats. 94, Ch. 906) made FTB's child support collection program permanent.

AB 257 (Stats. 95, Ch. 481) extended the child support collection incentive payments for the counties.

AB 1832 (Stats. 96, Ch. 1062) extended the child support collection incentive payments for the counties.

SB 247 (Stats. 97, Ch. 601) eliminated counties sharing of their incentives payments with FTB.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>x</u> PENDING

Department Director

Date

Gerald Goldberg

5/18/1999

SPECIFIC FINDINGS

Currently, for fiscal years beginning 1998-99, county district attorneys receive incentive payments for collecting child support under Section 15200.81 of the Welfare and Institution Code. Before fiscal year 1998-99, the incentive payments were received under Section 18200.85.

Under current federal mandate for all states to create a statewide automated child support system, California contracted with a private business for the development and implementation of the Statewide Automated Child Support System (SACSS). However, the SACSS contract has now been terminated and alternative systems are being explored.

This bill corrects in the Revenue and Taxation Code reference to the section number of the law that provides incentive payments and SACSS.

Currently, a perfected and enforceable lien for delinquent child support arises against personal property of an obligor after: a court order is issued, the amount of support affixed, and a lien for that amount is filed with the Secretary of State. Under personal income tax law (PITL), a statutory lien arises when there is an unpaid tax debt; however, when there are competing liens, a statutory lien is enforceable only against other taxing agencies. For tax liens to compete against judgment creditor liens, a tax lien must be recorded in the county where the real property is located or, for personal property, filed with the Secretary of State.

Currently, when FTB is collecting both a delinquent tax and nontax debt for the same person, the law sets forth the collection priority. Generally taxes have first priority followed by child support and then other nontax debts, as specified.

The federal Welfare Reform Act requires states to have procedures for:
(1) statutory real or personal property liens for overdue support owed by a noncustodial parent who resides or owns property in the state; and
(2) recognizing statutory liens arising in another state when the other state complies with procedural rules, which need not require judicial notice or hearing prior to the enforcement of the other state's lien.

This bill would: (1) create a statutory lien on personal property of an obligor for all amounts of overdue support regardless of whether the amounts have been adjudicated or otherwise determined and (2) allow an out-of-state statutory personal property lien for child support to be enforced in the same manner and to the same extent as a California personal property lien.

Policy Consideration

- It may be unprecedented to create a lien for amounts that have not been adjudicated or otherwise been determined by a legal forum. It is unclear as to whether this statutory lien could compete against recorded judgment or tax liens and if the lien date is the date the amount is first overdue. It is unclear whether this provision affords due process to the noncustodial parent. Additionally, this provision would allow the same treatment for out-of-state liens where the noncustodial parents is a California resident or owns property in California.

- By providing that the amount of overdue support subject to the statutory lien need not be adjudicated or otherwise determined, the lien provisions in this bill go beyond the federal requirement for a state procedure for a statutory liens. In addition, it appears the bill does not meet the federal requirement that the states must have procedures for real property statutory liens.
- Currently, if FTB is collecting both child support and a Personal Income Tax (PIT) debt, by law FTB must give priority to the collection of PIT. The statutory lien provision clouds this priority because it could be interpreted that all assets of an obligor would be routinely encumbered to the extent of the child support delinquency and, therefore, generally not available for collection of the PIT debt.

Implementation Consideration

This bill would not affect FTB's **child support collection** program.

The provision providing for a statutory lien could affect the collection of **personal income taxes** to the extent the noncustodial parent has both a child support delinquency and a PIT delinquency and insufficient funds from a single asset to pay both debts. Currently, if FTB took collection action with respect to a bank account or escrow account before the DA issued its comparable levy, FTB would be entitled to the funds since it took action first related to the asset. However, under this bill, it could be argued by the DAs that the child support debt is entitled to the funds before taxes because the statutory child support lien arose prior to FTB's order to withhold being issued.

FISCAL IMPACT

Departmental Costs

Staff anticipates the departmental costs associated with this bill could be absorbed in FTB's existing budget.

Collection Estimate

Because of the personal property liens provisions, the General Fund impact for FTB cases being enforced by FTB (reduced PIT collections partially offset by state welfare recoupment) potentially could result in a net loss on the order of \$5 million annually. Currently, approximately 50,000 FTB cases have dual child support/tax delinquency obligations.

BOARD POSITION

Pending.